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# In the Supreme Court of the United States.

OCTOBER TERM, 1911.

HENRY CLAIRMONT, PLAINTIFF IN ERROR,
*v.*
THE UNITED STATES, DEFENDANT.
} No. 239.

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.*

## BRIEF FOR THE UNITED STATES.

### STATEMENT OF THE CASE.

The question, in brief, is whether section 2139 of the Revised Statutes, and subsequent acts, which makes it an offense to introduce liquor into the Indian country, is applicable to the introduction of liquor into the strip of land 200 feet wide which constitutes the Northern Pacific Railroad right of way across the Flathead Reservation in Montana.

The plaintiff in error was arrested while on a train of the Northern Pacific Railroad on this right of way. He was not in transit across the reservation but was intending to leave the train at an approaching station called Ravalli, which is within the reservation.

The arresting officer testified that the defendant was drunk and that upon a search he (the officer) found a pint of whisky on his person. (Tr., p. 10.)

The Act of 1897 (29 Stat., 506), under which the conviction was had is as follows:

> That any person who shall sell, give away, dispose of, exchange, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and any person who shall introduce or attempt to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, which term shall include any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be punished by imprisonment for not less than sixty days, and by a fine of not less than one hundred dollars for the first offense and not less than two hundred dollars

for each offense thereafter: *Provided, however,* That the person convicted shall be committed until fine and costs are paid. But it shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the War Department or any officer duly authorized thereunto by the War Department.

**ARGUMENT.**

I.

Beyond question the Indian land title in this strip had been entirely extinguished.

The deed of the United States to the Northern Pacific Railroad (13 Stat. L., 365) transferred the fee with at most a possibility of reverter (*Northern Pacific Railroad Co.* v. *Townsend*, 190 U. S., 267; *Buttz* v. *Northern Pacific Railroad Co.*, 119 U. S., 355), and the deed from the Indians to the United States was even broader, although, in view of the preambles, it might be construed as leaving to the Indians a possibility of reverter (Ex. Doc. No. 15, 48th Cong., 1st sess., reprinted as Appendix B hereto).

II.

There is nowhere any express provision for the retention of any Federal police power over this strip, excepting that statements were made by the representative of the United States in the council with the Indians which preceded their deed to the

effect that no liquor would be sold "on the reservation at the depots;" that after the road was built there would be "no white men to sell liquor," and that "the white people will not be allowed to go on the reservation." We have italicized in the report of this council, which is printed as Appendix A hereto, various other expressions tending to show that the Indians were assured that the restrictions would not be withdrawn from this strip and that the land was to be surrendered only for the limited purpose of a railroad.

This informal and parol agreement, and the fact that the grant was made for the limited purpose, and the physical situation of the strip in reference to the reservation and in its contact with the Indians tend to assimilate the case to *Dick* v. *U. S.* (208 U. S., 340), in which the Federal liquor laws were held to persist notwithstanding the extinguishment of the Indian title, the allotment of lands in severalty, the granting of citizenship to the Indians, and the incorporation of the lands within the limits of a State. It is true that in that case the reservation of the Federal power was made formally and by definite and explicit treaty stipulation.

III.

In the Montana enabling act (25 Stat. L., 677) which was passed in 1889, the United States seems to have reserved its jurisdiction with reference "to unappropriated public lands" (which might include this strip in view of the possibility of reverter)

"to all lands lying within said limits owned or held by any Indians or Indian tribes" and "until the title thereto shall have been extinguished by the United States." The section in full as follows:

> SECOND. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, *and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States;* that the lands belonging to citizens of the United States residing without the said States shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the States on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the

Rider A.

End of Article II, p. 4.

Here, though there was no formal or explicit treaty stipulation, the continuation of the Federal power is still fairly to be implied from the facts of the physical situation of the land and the limited purpose of the grant to the Northern Pacific Railroad, and also from the contemporaneous promises made by the Commissioner in the council at which he negotiated the deed from the Indians. (Appendix A.) Thus, in *United States* v. *Payne* (8 Fed. Rep., 883, 895), the decision was based on implications of the treaty and the situation of the land relinquished relative to other Indian lands, and also the purpose for which the Indian title was extinguished.

> a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said States so long and to such extent as such act of Congress may prescribe.

IV.

In view of these conditions the decisions of this court in *Maricopa & Phoenix Railroad Co.* v. *Arizona* (156 U. S., 347) and *Bates* v. *Clark* (95 U. S., 204, 208, 209) may perhaps finally dispose of the case.

The *Maricopa* case involved a question of the territorial power to tax the right of way across an Indian reservation, but the actual decision may be distinguished on the ground that a State power to tax is involved within the purpose of the grant and is not inconsistent with the continuation of the requirements of the reservation in reference to matters disassociated from the purpose of the grant. So the court said, referring to the grant of the railroad right of way across the reservation, that—

> Its necessary effect was, to the extent of the grant and for the purposes thereof, to withdraw the land from the operation of the prior act of reservation.

*Utah & Northern Railway* v. *Fisher* (116 U. S., 28) was cited in this connection, and there again the court seemed to imply that the grant of a railroad right of way took the land out of the reservation only in so far as was necessary for the particular purposes of the grant.

The court said:

> It is contended by the plaintiff that these stipulations (that is, of the treaty) can not be carried out if the laws of the Territory are enforced on the reservation; and in support of the position special emphasis is placed upon the clause in regard to persons passing over, settling upon, or residing in the Territory and the clause touching wrongdoers among the Indians. As these treaty provisions have the force and effect of a law, it is insisted that the reservation is excluded from the general jurisdiction of the Territory as effectually as if the exclusion was made in specific terms.
>
> To uphold that jurisdiction in all cases and to the fullest extent would undoubtedly interfere with the enforcement of the treaty stipulations, and might thus defeat provisions designed for the security of the Indians. But it is not necessary to insist upon such general jurisdiction for the Indians to enjoy the full benefit of the stipulations for their protection. The authority of the Territory may rightfully extend to all matters not interfering with that protection. It has, therefore, been held that process of its courts may run into an Indian reservation of this kind, where the subject matter or controversy is otherwise within their cognizance. If the plaintiff lawfully constructed and now operates a railroad through the reservation, it is not perceived that any just rights of the Indians under the treaty can be

> impaired by taxing the road and property used in operating it.
>
> * * * * *
>
> By force of the cession thus made the land upon which the railroad and other property of the plaintiff are situated was, so far as necessary for the construction and working of the road and the construction and use of buildings connected therewith, withdrawn from the reservation. The road and property thereupon became subject to the laws of the Territory relating to railroads, as if the reservation had never existed (pp. 31, 32).

The territorial power to tax the railroad line is not necessarily inconsistent with the continuation of the Federal police power for purposes of the discharge of the duty toward the Indians.

> *United States* v. *43 Gallons of Whiskey* (93 U. S., 188; 108 U. S., 491).
>
> *United States* v. *McBratney* (104 U. S., 621).
>
> *Thomas* v. *Gay* (169 U. S., 264, 277).
>
> *Draper* v. *U. S.* (164 U. S., 240).
>
> *Truscott* v. *Hurlburt Land & Cattle Co.* (C. C. A.), (73 Fed., 60).

*Bates* v. *Clark, supra*, differs on its facts from this case in an essential particular, namely, that the *locus in quo* there concerned had been ceded by the Indians for purposes of white settlement and for all purposes, and their interest and relation thereto had been withdrawn. The land concerned was not within the general domain of a reservation. The very pur-

pose and intent of the grant was to dissociate the lands from the Indians and open them up for white settlement. This appears from the full statement of the facts in the report of the decision of the lower court (46th Northwestern Reporter, 510). The extinguishment of the legal title for such purposes and under such circumstances would very naturally carry with it an implication that the laws enacted for the protection of the Indians were to be no longer applicable, and the court stated that the extinguishment of the Indian title would not withdraw the lands from "Indian country" if "by the treaty by which the Indians parted with their title, or by some act of Congress, a different rule was made applicable."

Here, however, from all practical, human and public points of view, this little piece through the heart of the Indian country, granted merely for a railroad right of way and with no view to white settlement, was still "Indian country." The actual human relation of the Indians to the strip was not substantially changed by the mere extinction of their legal property title to the lots concerned. The only population which was related to the strip was Indian, as it always had been, and their interests were as vitally dependent upon the exclusion of liquor from the strip as from any other single lot in their reservation. Apparently, as we have shown from the proceedings of the council, the Indians understood and expected and were assured by the representative of

the Government that the *status quo* would be continued excepting only with reference to railroad operation.

The *locus in quo* was a part of a tract definitely set apart as a *reservation* for exclusive occupancy by the Indians. (12 Stat., 940.) It therefore possessed its character as Indian country more because of the specific action by Congress than by reason of the original general definition of Indian country. (4 Stat., 729.) Here was a later affirmative and special act of Congress which might well fall within the meaning of this court in stating the exception to the rule in *Bates* v. *Clark, supra*, to the effect that the extinguishment of the Indian title will not revoke the operation of the liquor laws if by treaty with the Indians or some act of Congress a different rule is made applicable.

Unless such a situation is ruled by the *Maricopa case*, and the *Fisher case, supra*, even in reference to the liquor traffic, there appears to be no authority directly on the subject, excepting that Judge Hanford in the District Court for the District of Washington, held that introducing liquor and establishing a saloon in a mining claim which lay within the boundaries of an Indian reservation was not illegal. (*U. S.* v. *4 Bottles Sour Mash Whiskey*, 90 Fed., 720.) On the other hand, Attorney General Griggs rendered an opinion reported in 22 Ops. A. G., 232, in which he held that the establishment of a distillery on lands in the Indian Territory was illegal, notwithstanding the

Indian legal title to the particular piece of land had become extinct. His reasoning in this particular is as follows:

> Just to what extent over this vast territory thus described as Indian country the Indian title must be extinguished in order that, under the decision referred to, a particular locality therein shall cease to be Indian country is not apparent. But, in view of the evident object and purpose of Congress in this and kindred legislation to prevent the introduction of intoxicating liquors among the Indians or into localities inhabited by them, it is obvious that much more in this direction is required than that the Indian title shall be extinct as to the particular lot or parcel of land on which the distillery is erected or proposed to be erected.
>
> In view of this and of existing facts in the Indian territory, the question submitted is somewhat indefinite. You ask in substance whether there is anything in the laws of the United States that prevents the establishment of a distillery in the Indian territory "*on lands therein* when the Indian title is extinct"?
>
> If this means merely that the Indian title to the particular lands on which the distillery is proposed to be erected is extinct, the first part of the question should be answered in the affirmative, while if it means that the Indian title is extinct there over such an extent of territory as that such territory has, under the doctrine of *Bates* v. *Clark*

(*supra*), ceased to be Indian country, then the section above referred to does not itself prohibit such distillery.

The judgment should be affirmed.

WINFRED T. DENISON,
*Assistant Attorney General.*

LOUIS G. BISSELL,
*Attorney.*

APRIL, 1912.

# APPENDIX A.

## PROCEEDINGS OF THE COUNCIL.

*Council held by Hon. Joseph K. McCammon, Assistant Attorney General, appointed by the Secretary of the Interior to negotiate an agreement with the Indians on the Flathead Reservation for right of way for the Northern Pacific Railroad through the reservation.*

AUGUST 31, 1882—3 p. m.

Present: Arlee, Adolphe, Eneas, and Michelle, with headmen and Indians of the Flathead, Pend d'Oreilles, and Kootenais Tribes.

Agent RONAN said: Mr. McCammon is here from Washington, representing the United States Government, to meet the Indians in council; and it is desired to have them listen attentively. He is here with the voice of the Great Father, and brings his words to the Indians. I have no further words of introduction.

Commissioner MCCAMMON. My friends of the Flathead, Pend d'Oreilles, Kootenais, and other tribes living on the Jocko Reservation: I have been sent by the Great Father at Washington a great many miles to see you and talk with you. He knows how well you have treated the white people these many years; that you have been peaceful and happy, and have taken care of yourselves; that you have always been his friends and the friends of his people. Knowing these things he does not wish to take from you

your lands. He knows, however, that a railroad is to be built on the borders of your reservation. Twenty-seven years ago you and your fathers made a treaty with the whites. That treaty which you and the others made provided for a country here in which you and your fathers should live. In that treaty you and your fathers agreed "if necessary for the public convenience roads may be run through the said reservation." By another treaty, made the same year at the treaty grounds, near the mouth of the Judith River, in Nebraska, which treaty was signed by the Flathead Nation and other Indians, it was provided that "for the purpose of establishing traveling thoroughfares through the country, and better to enable the President to execute the provisions of this treaty, the aforesaid nations and tribes do hereby consent and agree that the United States may, within the countries respectively occupied and claimed by them, construct roads of every description, establish lines of telegraph," &c. The Great Father and the Great Council in 1864 gave the Northern Pacific Railroad Company the right to build a railroad through this country. The railroad company now say to the Great Father, "We want to build a railroad through the Jocko Reservation a few miles." The Great Father says, "The Indians on the Jocko Reservation gave me consent, years ago, to have roads of every description built through their lands." He understands that a wagon road has been built and used for some time. That is one kind of road. Another kind of road is a railroad. It is a better and quicker way of traveling. It is a kind of road that other Indians all over the country have allowed to be built. But the Great Father says that he thinks the Indians should be paid for the

little land that will be used by the railroad. He says he thinks the railroad will be good for the Indians as well as for the whites. The building of the road may bring white men on the reservation in order to grade the road, lay ties, &c., but when the road is built no white men will remain except at stations, and there only so many as are necessary. I will now show you a map of your reservation [shows maps]. The railroad is to come up here from the Missoula, entering the reservation by the Jocko River, and then going along the Jocko and Pend d'Oreille Rivers to the west line of the reservation. Now, as all the lands on the reservation belong to the Indians the United States wants to pay, and thinks it right to pay, for 100 feet of road on each side of the track, for a distance of 53.26 miles on this narrow line; and also for five squares of ground alongside, to be used as stations, being about 130 acres in addition, fully described on the map. These stations are where cars will stop to take on passengers, Indians and others, and Indian wheat and grain if you want it carried off to sell; and where goods will be sent or received. This will cover a very small part of the reservation—like a spider web or fly track across the reservation [illustrating]. Your reservation contains about 3,000,000 acres; the railroad will occupy 1,500 acres, just about as much as an ordinary wagon road. Now, the Great Father asks me to inquire of these Indians what will be a fair price for this small tract. He says you ought to be paid a fair, reasonable price, just as much as he would pay a white man, no more and no less. Where the railroad runs through the farms of Indians, those Indians will be paid for their fences, farms, houses, and crops, if interfered with, the money to be paid to each Indian, or to the agent

to be used for them. I am appointed to find out how much this will damage each Indian farm. This refers only to houses, fences, crops, &c., that belong to individual Indians.

MICHELLE. You don't know how much individual Indians will get, do you?

COMMISSIONER. No; that we will determine hereafter. I went last year to Fort Hall Reservation. The Indians there allowed a road to be built, and no white men have come on the reservation because of the road. That is on the same plan as this. *Hundreds of miles of road are built through the Indian Territory, and yet white men are kept out, except the agents of the railroads.* The Northern Pacific Railroad has stopped at the line of your reservation, and wishing well to the Indians, does not want to interfere with them, except by some arrangement so that the Indians may be paid. So the Great Father sends me to ask you what you want to be paid for this land which the railroad company needs. I want you to consider this matter and ask questions. I don't want any one to misunderstand. I want to be just to the Indians. I want to protect their rights. I want them to talk. I am ready to hear from Arlee, Michelle, Adolphe, Eneas, or the head men who know what they want to say.

ENEAS. I presume you will not ask us to answer now. There are some men here who have wild ideas, and we want to adjourn and talk the matter over.

MICHELLE. We don't want to detain you for a lot of humbug. Of course you and the Great Father claim that we ought to be paid for the land taken; we are not to be cheated; we are to be treated just the same as whites.

COMMISSIONER. The Crows last year sold land to this company just the same as you are asked to do. Whatever time you wish will be granted.

ARLEE. I am going to talk not about what you are talking about. The Great Chief don't pity me. I am crowded on both sides. White men go up and down the reservation with cattle. I lose cattle in plenty. I want you to get the whites off the land at the head of Flathead Lake. I am old. I will soon die. There are a lot of young ones. I would like to have them live happy. But they will always be in trouble with white men if they remain so near us. It may be true that the railroad would help the Indians, but I would like to get the whites off the Flathead Lake.

COMMISSIONER. Cattle are driven through the reservation because the treaty provided for it. White men who steal are bad men. There are bad white men and bad Indians. White men punish bad white men when they can find them. Fewer cattle will go through the reservation after the building of the railroad, for then many cattle will go through on cars. I will report your wishes to the Great Father. The Great Father did not know them.

ARLEE. The country we gave to the Government is very valuable. Lots of white men have made independent fortunes in my country. Since twenty-seven years ago, when my forefathers made the treaty and gave you the country east and south of this, you have been digging gold there; that country is very valuable. You must not think there are so few here. Lots of others think of coming over here and living on this reservation. Be sure to tell the Great Father my wishes.

MICHELLE. I and Eneas think as does Arlee.

COMMISSIONER. Tell him I (not the Great Father) think if they want that country up north they should have it. I will tell the Great Father. They got the price they asked for their land; they sold it to the white man. Gold was not yet discovered there. They yet have fine lands, noble rivers, and majestic mountains.

RONAN. In my talks I feel as if I knew what Arlee wished to say. On the north side of the Flathead Reservation there is a narrow tract of United States land. Arlee fears that strip will be settled by whites, and Arlee feels if the Great Father will let the Indians have that then they will not be surrounded by whites.

SEPTEMBER 1, 1882—1.40 p. m.

Commissioner MCCAMMON. My friends, I am glad to see you to-day, and hope your hearts are good towards the Great Father. I will be pleased to hear what the chiefs have to say. If there is anything they don't understand in the talk of yesterday I will try to make it clear. I am ready to hear from them now.

ENEAS. I am the chief and you see me now. I have not doubt you are sent to see us by the Great Father. I am the chief and this is my country. I am not joking in telling you I would like to get the Flathead Lake country back. There are things that the Government promised me in that treaty that I have never seen. The Government promised me everything we needed. The Government told me it would send a blacksmith, and build schoolhouses, and furnish teachers at the agencies to instruct Indians, and a head farmer, and build houses for us. The Government wished us to be like white men, and these were to instruct us. It promised me a tinner, a wagon maker, a plowmaker,

a hospital, and a doctor to look after the sick; and that is the reason we signed the treaty. I was glad to think we were to have these things. We had a big country, and under those conditions we signed the treaty. Seven years after that we learned that the line of the reservation ran across the middle of Flathead Lake. We didn't know that when we signed the treaty. That is the reason we want that country back. Besides, we did not get one-half of the annuities that belonged to us. It was divided among yourselves. You told us that after awhile we would be intelligent and rich and like white men. We are poor now. We try to have whites to assist us, and they won't because we are Indians. That is the reason we want to have the whites kept out of that Flathead Lake country.

COMMISSIONER. I am glad to hear Eneas. I know what a good man he is. Major Ronan has told me what wrong has been done years ago; he can now trust Major Ronan; what he gets he gives the Indians. One reason why the Great Father forgot the Flatheads is that they have been so far from Washington; but now when the railroad is built they will be within four or five days from Washington; and the Great Father and his people will see and pity the Indians. That is one thing the Great Father means when he says the Indians will be benefited by the railroad. I will tell the Great Father about Eneas's desires, and do all I can to carry out his wishes.

ARLEE. What is the reason you are not able to treat with the Indians about that country? You have full power.

COMMISSIONER. Arlee is mistaken; I have not power to treat about everything. As I said yesterday, the Great Father did not know what your wishes were

about that strip of land. He only knew about the railroad, and he told me to agree to pay for the land to be used by the railroad. The land is not taken by the railroad, but is taken by the Great Father, who lets the railroad use it. Possibly you will understand my power by an example. You are a chief of your tribe; you send one of your young men to fish; but he goes off to visit his friends miles away; you are waiting for your fish all the time; the young man had no right to visit his friends until he got his fish. So I have no right to do more than the Great Father told me, but must return to him. Do you understand?

ARLEE. I understand.

COMMISSIONER. That is my position.

ARLEE. Is it true the Great Father don't know of the men north of the Flathead Lake?

COMMISSIONER. The country there belongs to the Great Father, so whites have a right to go there; but I will tell the Great Father all you say. It is all written down.

ARLEE. We will now quit talking about the head of Flathead Lake.

COMMISSIONER. Now, I will be glad to hear about the money to be paid for the use of the land for the railroad.

ENEAS. You know what I said, that the Government did not give half it agreed about annuities; and I think I don't wish the road to pass through this reservation. The Great Father is a good man, and when the Great Father tells me a thing I do it. I wish the Great Father to do me a favor and consult my wishes, and not let the road go through this reservation. There is a good way down the Missoula to Horse Prairie. You are a great people, and when you want to do a thing you can do it. What makes

you think the railroad can't go down there? This reservation is a small country, and yet you want five depots upon it. These are the best spots on the reservation. What is the reason I should be encouraged when you take the best part of my country? My country was like a flower and I gave you its best part. What I gave I don't look for back, and I never have asked for it back. The Great Father gave it to us for three tribes, Flathead, Upper Pend d'Oreilles, and Kootenais. What are we going to do when you build the road? We have no place to go. That is why it is my wish that you should go down the Missoula River. I am not telling you that you are mean; but this is a small country, and we are hanging on to it like a child on to a piece of candy.

COMMISSIONER. The line selected by the railroad company was selected ten years ago, because it was the best route, and because down the Missoula River would not be a good route. The men who selected it then and continued to prefer it are able men, and know the best route; and they say this is the only route that is good. The Great Father believes these men, and he sent me to represent him, not them, in this council. He thinks it is the best route, and the Indians won't be injured, the amount of land to be taken is small. The Great Father has respect for the wishes of the Indians, but he thinks he knows what is best for them, and feeling that way he wants to know what money they want for the land. The Great Father will take care that bad white men do not sell whisky to Indians. He thinks he can do that better with a railroad through your reservation than with one down the Missoula. He wants it here. He says, "You have told me I can build roads through your reservation;" but he also says you shall be paid,

he having pity on you. The Indians should remember they got no pay for the wagon road built through their reservation, but he thinks they should be paid for the land used by the railroad. The amount of land that will be taken by the Government is very small. Only a few pieces of land owned and improved by the Indians will be taken. There is plenty of good land in this and other valleys and reservations, and all that have to move will be paid; they will have the money to pay them for moving, or to do what they please with. I am now talking about improvements. The land belongs to all the Indians, but the improvements to individuals. All the Indians will be paid by the Great Council at Washington for all the land taken, when an appropriation is made, and this money will be used for the benefit of all the Indians; but the money for the fences, houses, and other improvements will be paid to the individual Indians whose improvements are taken. The Great Father has this matter much at heart.

ENEAS. Who established the lines of this reservation? It was the Great Father that got these lines established. Why does he want to break the lines? If we had no lines I would say no word. Lines are just like a fence. He told us so. No white man is allowed to live and work on the reservation. You know it is so in the treaty. That is the reason I say you had better go the other way. Why do you wish us to go away? It is a small country; it is valuable to us; we support ourselves by it; there is no end to these lands supporting us; they will do it for generations. If you say you will give us money for our lands, I doubt if we get it, because we didn't before.

COMMISSIONER. Eneas and the rest do not understand what I said yesterday. The two treaties

signed by your chiefs provide for roads of all kinds through your reservation. The Great Father is not asking for leave to build roads through your reservation; that was given twenty-seven years ago. The Great Father is not treated with great respect when I am told you will not get the money. The matter will be submitted to the Great Council, and the Indians will get the money; and whatever has been done in the past about these matters, you can rely upon the good faith of those who now have control of the Government. I do not understand why this opposition comes, when the Indians gave their faith years ago to the Great Father that this road might be built. I am sorry to hear what has been said. I came here as an honest man to talk to honest men, and I want you to consider well the words of the Great Father.

[An Indian in the audience says, "Railroads are not mentioned."]

The commissioner read from the treaties of July and October, 1855, about roads and continued: You can read it in the paper Arlee has. As I have told you, railroads run through nearly all the reservations in the country. There are a few they do not run through; but where they go Indians see less of whites than they did before, because the whites travel by railroads. This very railroad runs through the Crow Reservation on the Yellowstone. A railroad runs through the country of the Shoshones in Idaho, and this same railroad through the Umatilla Reservation. None of those Indians object to it. They are wise Indians; they have received their money. The Crows and the Bannocks and the Shoshones have received theirs. The Great Father expends the money for the benefit of those Indians. The Great Father will be sorry when

he hears that the Indians do not believe in his good faith. Shall I go back and say to the Great Father that these Indians do not believe he is treating them right? He has but one object, and that is your good; and if I go back without your having named a price for the lands, he will say they are not the good Indians and faithful friends I thought.

MICHELLE. I am going to speak to Indians and no word to white men. I told the agent it was useless for us to oppose giving the white men this strip of land. We don't know the plans of the white man; there is no use of us thinking. Just now he has something to compel. You spoke yesterday of the land at the head of Flathead Lake. I agree with you. That is my wish. You were here yesterday. No word he mentioned was bad. I think it was all good. When you get a gentle horse if you beat him he is bound to get mean; and you are to blame when you beat a dumb brute. He spoke to us gentlemanly; he used no harsh words; and we ought to be glad. We are all Americans. The British line is north, and beyond that are the British Indians. If the President thinks it best for a railroad to run through this land, I am quite willing. It is true this country has been reserved for us. When Garfield came here he told us this was our country; our agent and another big chief from Washington told us the same. Our agent is acting friendly with us. I do not think this gentleman has said a wrong word to us yesterday or to-day. He only wants a little strip of land; he might take it without asking, but he is going to ask us first, and then leave it to the chiefs. It is a thing that is bound to go through anyhow; and so you must not blame your chiefs.

COMMISSIONER. The whole country is not taken from you; just a little narrow strip is used for railroads; you can use it, except the narrow strip for a track and depot grounds. I remember last year, the Great Father, General Garfield, sent me to the Bannocks and Shoshones on this business. You all knew that great and good man, and he knew you and loved the Indians. I have heard that he thought much of you. What he said to me last year about the Shoshones and Bannocks the Great Father said of you this year. Consider well his words and be men. I want to ask Arlee and Michelle if the wagon road has taken the country from them? If not, then a railroad will not. *It is only a road with rail ties and locomotives to go through.*

ARLEE. *We don't think anything bad, but we don't want the railroad to go through the reservation here, because these white men are bad people. At Camas Prairie they sell whisky; they go there and get whisky, and our boys bother us about whisky. This is why we don't want the railroad to go through our reservation, because when the white men come in to work there will be trouble; that is all.*

COMMISSIONER. *About the man who sold liquor, we had him arrested and taken to jail. The same thing will be done by your agent; when he finds white men selling liquor he will arrest them. While the road is being built white men will have to come and build it; but after it is built there will be no white men to sell liquor. On the Crow and Shoshone Reservations no liquor was sold to Indians while the road was being built. It won't be as bad as Arlee thinks; I hope not bad at all for the Indians. No liquor will be sold on the reservation at the depots.*

ARLEE. It was our old people that were good; we had good chiefs; I don't know how many years it is since the white people came, and we have never had fights between us and the whites; nor have we ever killed you at all; and that is why I want to remain in my country quiet and undisturbed. I hear every few days that other tribes of Indians are fighting with the whites; then you win their country. You did not win my country from me at all; the big chief made our lines and told us to stay here all the time, and a few years ago Garfield sent me here to stay. But you don't mind what he said at all. Garfield said, "Take it easy; don't be uneasy." It was nine years ago that Garfield said, "Don't think we will thrust you from that country; that land belongs to you." Last winter I was at home lying down, when they told me men were surveying the place. Some said it did not amount to anything, but I said it would cut our reservation in two; and now to-day I see you here trying to get our land from us for the railroad. But I do not want any railroad here, for this is my country.

COMMISSIONER. This is your country; there is no doubt about that. The Great Father did not send me to ask for your country; he sent me to say he was going to build a railroad across your country, and he wanted to pay you for it. All this country is still yours and will remain yours. He wants you to feel good and remember his kindness. There is no intention to take the country away from you. A railroad is like the wagon road. The wagon road did not take your country from you and the railroad won't. How long has the wagon road been here? Your fathers were good men; they knew the treaty allowed a wagon road, and the same treaty will allow a railroad. The

railroad will help you more than the wagon road. It will keep white people out of your reservation. You can ship grain and all other goods by it. I want you to let me go to Washington and tell the Great Father you believe in his word. I will tell him what faithful children you are; how kind and full of peace and happiness you are. I will tell him of the great sight I saw yesterday; how well you treated me because he sent me. My heart was glad, and I said the Indians will listen to what the Great Father has to say and obey his words. I will again ask you if you can name what money you want for this right of way. If you can not, I will name a sum for you. When the railroad is built the Great Father will probably come out himself to see his country and you. It is too far from the railroad now.

ADOLPHE. It is true that you only want a small strip of my country; it is true that there will be no white men in our country. All will be glad if you only take a small strip of our country. Look at my hand [uplifted]; this is what they do in Washington. I lift my hand; the President does the same thing. It is true that what you say is in the treaty in regard to roads. In the treaty at Hell Gate in 1855 the Indians said the white men could have railroads through here. Governor Stevens said to Victor, "You are the head chief of three tribes here, and of the whites here, too;" and they said we will talk about this land here by and by; and we are having that talk now. Some time ago I did not know about talking, nor what it was to sign my name; now I know. If the whites are good, I am good. When there is blood on my hands, they are not wet with white people's blood. If what you have told me to-day is true, I will be glad. In this country you see no blood; other countries are stained with

blood. The line of my country extends from earth up to heaven.

COMMISSIONER. I want to talk again about this road going through your reservation. I want to explain to you that the Great Father sells land near and adjoining your reservation for $2.50 per acre. The railroad sells its land for $2.50 per acre near your reservation. It has land down towards the Missoula. I wish to be liberal. The Great Father told me to propose a fair price, and I think that $10 per acre is a fair price for the 1,500 acres. That is four times as much as the Great Father gets for his land. This would make altogether for the land $15,000. The Crows got only about five thousand, and the Shoshones seven thousand, or nearly eight. In addition each Indian will be paid for his fences and barns where this railroad interferes with him. The $15,000 will be for the benefit of the whole tribe.

ARLEE. I object to depots.

COMMISSIONER. Arlee never having seen railroads, don't know the amount of land required. Here is a glass with a few drops of water in it [illustrating]. The whole tumbler represents the reservation, the water the amount of land wanted for the railroad. The railroad wanted six stations; the Great Father said five would be enough. They wanted these for water for the engines. The railroad wanted a strip 400 feet wide; the Great Father said, "No, 200;" the railroad wanted larger and more stations; the Great Father said, "No; five stations, and these must be small ones." The Great Father was thinking of the wishes and the interest of the Indians.

ARLEE. I won't say more now about stations. The railroad down below is not done. The Indian don't know, but the Great Father knows and the

engineers know how much is required. The railroad don't want the Indian lands, nor does the Great Father, but he cares for your interests.

[After a delay.]

COMMISSIONER. Have you anything to say?

ARLEE. I want to know about the depots; what are they?

COMMISSIONER. Every railroad in this country has stations once in 10 miles for water, at the side of the track. If the railroad at Spokane has not stations every 10 miles it is because it is not yet finished. I have here the law of the Great Council, and it says the right of way through the lands of the United States is given for 100 feet each side, and stations for depots, &c., every 10 miles of its road. Let any young Indian read it if you want to hear it.

ARLEE. It is so.

COMMISSIONER. These stations are to accommodate you. We are not trifling with you. Arlee ought to be satisfied.

ARLEE. I want $1,000,000 for it.

COMMISSIONER. The whole reservation would not be worth that.

ARLEE. I thought you were here to help us.

COMMISSIONER. I am. I represent the Great Father as well as the Indians. I offer for the land four times what the Government sells its land near here for—$2.50 per acre. And $10 would be eight times what the Government usually sells its land for. Michelle, Eneas, and Arlee, are you ready to come to an agreement with the Government?

ENEAS. There is one thing I don't understand. How big are these stations?

COMMISSIONER. Eight hundred yards long and 90 yards wide for small ones; and all others about four

times as large, right along the road [shows a sketch and also a map]. I hope Eneas's mind is happy and that he understands.

ENEAS. I understand it now.

COMMISSIONER. I will read to Michelle the agreement drawn by direction of the Great Father.

MICHELLE. When I heard you the first time I was glad, but now when I hear what you offer I do not feel so well, because now you say that all the reservation is not worth $1,000,000. Now I do not agree with you.

COMMISSIONER. I am sorry if Michelle misunderstands me. I do not mean that the land is not worth $1,000,000 to the Indians, but that the same kind of land would bring no more among the whites. I only referred to that as they all refused four times what was the selling price of such land among the whites.

MICHELLE. When a railroad runs through the railroad company will get the money back in one day. They will run through my ranch and take my timber to build it with. I would not take $15,000. I do not mean we will make trouble; I only say we will not take $15,000. If you want to go through, go; but we won't take $15,000. I don't speak now, any more, because you offer only $15,000.

COMMISSIONER. Michelle should understand that what I offer is four times as much as the Government sells the same kind of land for to white men. Don't let him say that $1,000,000 is a fair price; I say I offer what is reasonable. I do not represent the railroad, nor have I anything to do with the railroad; I represent the Great Father.

ARLEE. We have said.

COMMISSIONER. We will not talk any more about the million dollars; the Great Father will not allow us to talk of that.

ARLEE. All right; then go by the Missoula. If the railroad don't want to give the money let it go by Frenchtown.

COMMISSIONER. The Great Father says the railroad is to go here. The railroad, according to the agreement, does not pay the money to the Indians; the United States pays it.

ARLEE. Why do you want to pass here? You have to make a big bend to come here; why not go by the Missoula? The treaty only talked about a trail, not about a railroad.

COMMISSIONER. Why, Governor Stevens was here to survey this country for a line of railroad. There is no attempt to take the country from you. You know that we are not proposing to take the country from you at all, and yet you speak as if we were.

ARLEE. Governor Stevens said in twenty years another treaty would end this.

COMMISSIONER. Arlee is mistaken. Of course this treaty is in force. Governor Stevens may have said that he or others would come back in twenty years, but not that the treaty would expire in that time. Do you want me to return to the Great Father and tell him that the good Indians, whom he always thought his friends, refused to sell a little land for ten dollars per acre, when not even the bad Indians of the country have asked that for their lands?

MICHELLE. How would it be if you had a good horse and I offered you a price that you did not think was right; if I took the horse wouldn't you complain?

When we made the treaty we did not say railroads could pass through our country; only common roads.

COMMISSIONER. They said roads of every description. Suppose I were to give Michelle a loaf of bread every day, and then were to ask him to return me a very small slice, would he not be a very bad Indian if he did not give me the slice when I needed it, especially if I had paid him the money for it? So the Great Father says, "You can have this country, but I want a small slice or strip for a road," and afterwards offers to pay for it.

MICHELLE. If you wanted a small piece of bread, I would say, "Here is a piece." If you say it is too small, I would say, "Take what you want."

COMMISSIONER. Michelle does not understand; he never saw a million dollars; he don't know what it is. It is nearly seventy times $15,000. The Great Father could not afford to pay $10 an acre for the Indian lands in the United States. He could not afford to pay the price now offered you, and would not have offered this if these Indians had not always been friends and good. We are not trying to make a hard bargain; we want to be liberal to the Indians. That is all. Do you want me to go home and tell the Great Father, or do you want me to stay till to-morrow?

MICHELLE. Do as you wish.

COMMISSIONER. What do you wish?

MICHELLE. I do not understand. You know it is not done; the agreement is not made.

COMMISSIONER. Then I will stay. Ask them to meet me earlier to-morrow.

SEPTEMBER 2—1.30 P. M.

Commissioner MCCAMMON. My friends, I am glad to see you; I hope you did not think I had unkind

thoughts yesterday. I had none but kind thoughts in my mind. I desire to hear from you or to answer any questions you wish to ask. I talked long yesterday, but I wanted to make everything as plain as possible. I did not want any one to misunderstand what I said. I am sincerely your friend. I have had much to do with Indians, and I believe they all consider me their friend. *The Great Father wishes to make a present to good Indians, and although the Indians had agreed in the treaties of 1855 to let roads be built through this reservation without pay he thought none the less they should be paid.* The Great Father had the right to build the road without pay, but he thinks you should be paid; he thought you ought to receive some money from him as a present. I would like to hear from any of the chiefs what is your minds this morning.

ARLEE. I don't wish to change our calculations. When we heard that you were coming we made up our minds what to say to you. Yes, we are all good Indians, and we have a nice country, and I don't wish the Great Father should bother us by a big railroad through the reservation. When we heard of your coming we made up our minds what to say to you, and I said it to you yesterday. You seem to like your money, and we like our country; it is like our parents. I have the same feeling I had yesterday, and I am not the only one. I told you about the money—what we ask; and you said it was an exorbitant price. We do not wish to change our ideas; we told you yesterday about our wishes.

COMMISSIONER. In the treaty of 1855, made by Governor Stevens, the Indian tribes now represented here sold to the Great Father the country which was then claimed by them. That country was great; it

extended from the British line to Big Hole River, and was very broad east and west. The Indians were then satisfied with the treaty, and have never been dissatisfied since. The money paid to your tribes was the sum of $120,000. That was only about one-ninth of what you now claim for a little strip of country through your reservation. You ask about nine times more for this little strip than what you received for all that vast amount of land. So you see you are mistaken as to the value of this little strip of country. I want you to think of this; that the $15,000 I offered yesterday is very much more per acre than the money you received under the treaty of 1855. As I have been fair and reasonable, I have a right to ask that you should be, and that you should trust me. I am afraid some bad white men have been misleading you about the price. No man is your friend who tells you that you should receive $1,000,000 from the Government.

ARLEE. We are not any way dissatisfied or hostile toward you or the Government. We only want a fair bargain; fair play on both sides. My forefathers, our chiefs, the head chiefs of the tribe, were like men with veils over their heads; they could not see at all; they were like blind men; and when Governor Stevens arrived and he began talking about this part of the country, they had no idea of their country; they were stupid. They signed the treaty. This reservation was offered by the man who made the treaty, and we are holding on to it. Our forefathers are all dead, and we are the chiefs nowadays, and are hanging on it.

COMMISSIONER. You are quite right in holding on to your reservation. As your friend, I say hold on to it; it is your land. I would be willing to give you

the land you want up north; but the little line that the railroad wants won't interfere with your land; it will give the Great Father a better chance to protect you. There are many white men in the East who look after your interest more than you do yourselves; they would not allow a wrong to be done to you; they would, I know, approve of what I have told you. If I have not told you what the little strip is worth, I would not dare to go back among those people. You can ask any of your friends here and they will tell you that those white people know more about your wants than you do yourselves. Their hearts are always good toward you. These friends will watch me, and if I have not a good heart toward you they would blame me; but I know you think I have a good heart for you.

ARLEE. Now, won't you try to raise it a little more?

COMMISSIONER. I will consider for a moment. [After a pause.] I will tell the Great Father I gave you $16,000. I will tell him that you are good Indians, as he knows, and I thought you were entitled to $16,000.

ADOLPHE. How many years will this $16,000 last? [They consult.]

ARLEE. We want the money. The reason we did not get the money before was because we took it in annuities. We prefer the cash.

COMMISSIONER. The Great Father knows more about you than they did years ago; and whatever wrong was done you then, will not be repeated now. This very railroad will bring the Great Father nearer to you. The money will be expended for the benefit of the Indians in the manner the Great Father thinks best. If he thinks, after hearing from you, that it is better to let you have the money, he will pay the

money. You must depend upon his judgment as to how the money will be paid. The Great Father will never forget you. He gives you money from year to year; he has many whites and many Indians to look after, and he gives you what he can. Something has been said about your timber; no timber will be cut from your lands, except on the right of way through. Your forests will remain, except as they cut trees out in building a road. They may have to cut so that the trees won't fall on the road; that is all the trees that will be cut.

ARLEE. Yes, that is so. The timber is my property and we demand some money for my property. There is timber cut on the reservation. I am sure you don't know; it is off the road entirely; it is on the creek near Pig Pen. I went up there and saw it.

COMMISSIONER. The white men had no right to cut it, and they will be very careful not to repeat it.

ARLEE. Yes, this council don't amount to much, because cunning white men cut it on the sly.

COMMISSIONER. But the railroad can not afford to allow white men to cut timber on your land.

ARLEE. I am sure I saw it with my own eyes.

COMMISSIONER. It may have been a mistake. The railroad people have been very careful in not coming on the reservation.

ARLEE. It is tie timber.

COMMISSIONER. Arlee should remember that there may have been a mistake as to the line, and if within the reservation line they did not cut the timber intentionally. We will have that line surveyed, and see if timber has been cut inside of the reservation.

ARLEE. It came to my mind and I wanted it explained.

COMMISSIONER. I introduced the matter of timber to you because I do not wish any misunderstanding about it.

ARLEE. Yes, that is right.

COMMISSIONER. Arlee and the rest are wise to protect their people.

ARLEE. I am glad for one thing to-day. I am happy about that strip of country north. Do you think we will get it back?

COMMISSIONER. I hope so.

ARLEE. I am your friend. I hold your hand a long time.

MICHELEE. Now, my friend, I am glad about this strip of country north. We want that strip of country. I don't wish to be bothered by men on the other side. I want a road clear to the line where the other Kootenais are. If we get it we want to get the few settlers away who are there. We have lost many cattle in the reservation by men going up and down and driving them away; and these Indians are glad when you said you would increase the land. The railroad line goes right through my land; I am not uneasy about it; I am glad I am going to get money for it.

COMMISSIONER. I will report to the Great Father what you say about the strip of country north.

MICHELEE. It won't take long, and you have got a telegraph.

COMMISSIONER. The Great Father is not now in Washington, and it will take longer than you think. I shall have to go back and explain to him by word of mouth, the same as I do to you here.

MICHELLE. I had five head of horses on the road lately, and the whites stole them. I am afoot now. I am very happy to-day. At first you said you

would increase our land, but now you say you will report to the Great Father. I don't quite understand.

COMMISSIONER. I said I was willing, but it is the Great Father's land, and if he thinks best he will give it to you. As to the strip north, the Great Father did not know what was in your minds, but when he does he will do what is best for you.

MICHELLE. The way we understood it in 1855 was that the land north belonged to us, but the man who ran the line got lazy and did not go north far enough.

COMMISSIONER. *I now ask interpreter to read the agreement to the Indians.*

MICHELLE. *I don't consider this a bona fide bargain; it is borrowing this strip of land.*

COMMISSIONER. *It is the use of it.*

MICHELLE. *I don't want you, after you get away, to let the white people suppose you have bought the reservation, and let the white people squat on it. That is the way I think. It is like the railroad borrowing the strip of land.*

COMMISSIONER. *It is just buying the use of the strip of land.*

MICHELLE. *When I buy a horse I pay for it. You told us the country was ours. I considered the matter, and let you have it for public travel on the road. You have told me there won't be any white men on the reservation; that is the way I consider the matter.*

COMMISSIONER. *Michelle is quite right; he understands it. The railroad will only use the little strip, just like the wagon road. Michelle and the rest understand it perfectly. I suppose this by their approving what Michelle says.*

MICHELLE. *If you fulfill your promise I will be enjoying the reservation. Now, I understand you to say*

*that when we go visiting we can jump on the railroad wagons and ride without paying expenses. I don't wish to pay a cent when I visit your country. Tell that to the Great Father.*

COMMISSIONER. *Michelle is right; the Indians always ride without paying whenever they want to visit their friends or the white people; but the white people will not be allowed to go on the reservation. I will come every year or two, as often as I can, to see him, so he will see that my promises have been kept.*

MICHELLE. I wish that you would come once in a while, so that I can complain of not being treated right by the white men. You say you are our friend and will come. I will be glad to see you. I want you to know my heart. *I despise liquor, cards, a liar, and a thief. I don't want to see such people here.* Tell that to the Great Father. A lot of Indians of this tribe are below; if they want to come here they can do so; and if other tribes want to stop here we will let them stop if they behave.

COMMISSIONER. *I promise for the Great Father and myself to help put gamblers and liquor sellers off the reservation, and all other bad men; and also to let such Indians as you want come on here and live. You must let the Great Father know when you want these Indians to come here.*

MICHELLE. And I trust that the commanding officer over at the camp at Cold Springs will fix the bad white men and Indians. I am taken care of by white men, and my own Indian agent tells me Major Jordan will get after the bad whites and Indians. Of course if any of my Indians should spill blood, you can do with them as you please; I have nothing to say about it. Also I have nothing to say if you put in jail my drunken Indians. You need not ask my permission.

Do the best you can to keep peace and the white men from our country. *Try and keep the white men from selling whisky to my Indians. We are uneasy about whisky matters for fear of getting into hostilities and losing our lands. I am glad to hear that the man on Camas Prairie is arrested, and I hope you will punish him severely. You saw how it was the day you came here.*

COMMISSIONER. *Major Jordan, your agent, and the United States marshal will see that men who sell liquor to Indians are punished. They hate whisky; that is, they hate to have it sold to Indians, and they will do all in their power to prevent your young men from getting into trouble. You see what your agent did the other day in having that man on Camas Prairie put in prison. It is bad for Indians to drink whisky, but worse to sell it to them.*

MICHELLE. *My agent told me when that big gang of men came here from below, "I will be the man to watch and keep them from selling whisky to the Indians." I wish white men to come no nearer than Horse Prairie with liquor. My agent says we will be bothered while the road is being built, and I understand what he tells me. I wish you would do the best you can to keep bad men from doing damage. I suppose we will be bothered while the new road is being built, and I want Major Jordan to be ready any day to take my part. I will let the agent know first, and he will say to Major Jordan—and this big chief is listening.*

COMMISSIONER. *Michelle understands it perfectly, and the rest.*

ARLEE. *I don't want white men to bring stock here any more. There will be lots of people here when the railroad is finished. The officers can clear off white men.*

COMMISSIONER. *While the road is being built some stock will be used by the white men. When an agent wants the commanding officer at Fort Missoula, he sends for him. I want you to understand that while the road is being built much stock will be here. If your agent wants troops he will send for them to protect you.*

AFTERNOON SESSION, 3 P. M.

COMMISSIONER. My friends, I am about through with our talk. From my heart I say you have done well. When you see me another year I hope you will say you have done well. You will not regret one thing that has been done. You have done the best that could be done for yourselves and for the white man. I will go down the river and put a value on the individual improvements on the ranches used by the railroads. I want you to ask Arlee, Adolphe, Eneas, Big Sam, Pattie, and all the rest, to come and sign this paper to-day, or go to the agency, so that all of their names will be on this paper. Then this will be the last time I will see my good friends of these tribes. To-morrow I will leave, and will go and see the Great Father and will tell him all your wishes, particularly about your wanting that strip of land to the north. The Great Father wants to do the best for all his people, and he will listen to me and do what he thinks best about that and all other things. I am through.

MICHELLE. You told us you were going to have a fair understanding. You told us that you would be glad to have the amount of the land increased. I was glad when you mentioned that; I jumped up from my chair and shook hands with you, and then you said it was not in your power, but you would mention it to the Great Father. It was that that

made me let go of the million dollars. I don't quite understand why you say now you have no authority to treat for that strip, but will mention it to the Great Father. I would like to have a copy of the treaty and have men who can read explain it to me.

COMMISSIONER. Michelle is right; the land is not to be sold to the railroad company. He shall have a copy of the agreement. Michelle is mistaken if he thought I told him I had authority to treat now for the strip of land at the head of the lake. I said all along, yesterday and to-day, that I could only report to the Great Father what they wished, and he will likely send some one out here to see them about this land. I don't want to have Michelle make a mistake.

ARLEE. I don't consider we are mistaken; that is the reason we jumped and shook hands.

COMMISSIONER. I explained it to Arlee, as I had done before. You must trust the Great Father, and trust that I will tell him. Now, I would like to go with the agent and see the farms. I would like to have you ask the agent whether I said I would treat about that north land to-day. I didn't understand Michelle's remark to be that he would sign this agreement on account of that strip of land. I said I would give you $16,000. I said we would stop talking about the north land.

ARLEE. You were talking about that to Michelle. That money is a small sum. Donald says so. So far as I am concerned, I agree with you. You said that personally you would be glad to have them have the land.

COMMISSIONER. I told them from the first I had no authority to treat regarding that north land. I illus-

trated it to him yesterday when I spoke about his sending a man for fish.

MICHELLE. If we could get the strip of country north, we would not ask anything for the right of way.

COMMISSIONER. I repeat what I before said, that I have no right to give the strip of land north; but I said I would tell the Great Father. Suppose Michelle, Arlee, and Eneas wanted to sell the reservation, and came to me for that purpose, you would say, "They have not consulted our people and have no right to sell our reservation." Unless they consult their people they could not bind them. That is what I said. I could not bind the Great Father until I told him about it. Your chiefs can do nothing without consulting their people. I can do nothing except by the orders of the Great Father. He has given me no orders about this strip.

ARLEE. I knew you would not give that million of dollars. My people don't want the railroad through here, and that's why I asked a million dollars.

COMMISSIONER. All I said is written down, and you can have a copy of what I said. I have told you the Great Father said the road was to be built, not for the benefit of the white men only, but also for the Indian.

ARLEE. I don't know how the road would benefit the Indians.

COMMISSIONER. That is because Arlee never saw a railroad. The Indians will be nearer the Great Father, and he will be better able to protect you. I told you also that if you followed the Great Father's wishes in this matter, he would do what was best for you and might give it to you.

ARLEE. Yes; the only benefit I see is if you give us that strip of land north, when I die it will benefit

my children. The papers you have do not say that we have sold the country.

MICHELLE. A great many have clear ideas; others are stupid, and can not understand it; so we want a copy.

COMMISSIONER. The white men think I have been very kind to the Indians, and have tried to explain everything as plainly as possible. The agent and commanding officer will say so. Agent Ronan and I will have to leave now. I want the men to sign the agreement.

MICHELLE. I am not bothering my head about the railroad going through my field. I know that is right. If we can get back that country north we don't care about the railroad going through; it may go through free. Don't have hard feelings toward us for saying this. We are all one. My skin is dark. We are one nation. The international line is far north, but we are under one flag. You treat me as one of your people, and I want to do the same. The agent told me himself that he had instructions to see that the Indians get their rights.

COMMISSIONER. I will promise to use my influence to get that strip of land for you, and I want you in return to get signatures for this agreement. I feel kind to all the chiefs and to the rest of you. We all belong to one nation. We were all born in the United States.

MICHELLE. This reservation is only large enough for three depots.

COMMISSIONER. The depots will be as small as possible. You will see what the railroad does. If you find reason to complain, your objections must be made to the Great Father. Everything possible will be done to make the Indians contented and

happy. There will be only five stations, and if the Indians are good and sober, the railroad will probably employ them.

MICHELLE. That is all I have to say.

ADOLPHE. I am one of the Flatheads. I am going to speak to you. This and Bitter Root is my country. You told us once we should respect the Great Father, and I think you should respect what I have said; for this reason I have great faith in the Great Father and you, and therefore talk of this strip of land. I guess we will be happy on this reservation. Look at the blood the white man has spilled. Where is the blood we have spilled? Just for this I respect and honor the Great Father and you, for I know he is a good-hearted man. Our God is a good, kind God. Our chiefs have been directed from above to treat your people well.

The council then adjourned.

## APPENDIX B.

### THE DEED.

Whereas by section one of an act of Congress approved July second, eighteen hundred and sixty-four, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific coast by the northern route" (thirteenth Statutes at Large, page three hundred and sixty-five), the Northern Pacific Railroad Company was authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route, as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude to some point on Puget Sound; and

Whereas by section two of said act, Congress granted to said company the right of way for the construction of said railroad and telegraph line to the extent of two hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary ground for station buildings, workshops, depots, machine shops, switches, sidetracks, turntables, and water stations; and

Whereas by said section two Congress provided that the United States should extinguish as rapidly

as may be consistent with public policy and the welfare of the Indians, the Indian titles to all lands falling under the operation of this act and acquired in the donation to the road named in the act; and

Whereas by treaty between the United States and the confederated tribes of the Flathead, Kootenay, and Upper Pend d'Oreilles Indians, concluded at Hell Gate, in the Bitter Root Valley, July sixteenth, eighteen hundred and fifty-five, and duly ratified and proclaimed (twelfth Statutes at Large, page nine hundred and seventy-five), a district of country therein described, situate in the then Territory of Washington, but now included within the boundaries of the Territory of Montana, was set apart for the use and occupation of said confederated tribes, and as a general Indian reservation upon which may be placed other friendly tribes and bands of Indians of the Territory of Washington, who may agree to be consolidated with the tribes parties to said treaty, under the common designation of the Flathead Nation; and

Whereas by article three of said treaty it is provided that "if necessary for the public convenience roads may be run through the said reservation, and on the other hand the right of way with free access from the same to the nearest public highway is secured to them, as also the right in common with citizens of the United States to travel upon all public highways;" and

Whereas by treaty between the United States and said Flathead Nation of Indians and others, concluded at the council ground on the Upper Missouri, near the mouth of the Judith River, in the Territory of Nebraska, October seventeenth, eighteen hundred and fifty-five, duly ratified and confirmed (eleventh

Statutes at Large, page six hundred and fifty-seven), it is provided (in the eighth article thereof) that "for the purpose of establishing traveling thoroughfares through their country, and the better to enable the President to execute the provisions of this treaty, the aforesaid nations and tribes do hereby consent and agree that the United States may, within the countries respectively occupied and claimed by them, construct roads of every description, establish lines of telegraph, and military posts; use material of every description found in the Indian country, build houses for agencies, missions, schools, farms, shops, mills, stations, and for any other purpose for which they may be required, and permanently occupy as much land as may be necessary for the various purposes above enumerated, including the use of wood for fuel and land for grazing, and that the navigation of all lakes and streams shall be forever free to citizens of the United States"; and

Whereas the said company did on the fifth day of July, eighteen hundred and eighty-two, file in the Department of the Interior a map showing the definite location of its line of railroad from the southern boundary of the reserve for the Flathead Indians, thence northwesterly across the southwestern part of said reserve to the western boundary thereof, all lying and being within the Territory of Montana, as definitely fixed and determined in compliance with said act of Congress, and as approved by the board of directors of said company by resolution passed May ninth, eighteen hundred and eighty-two; and

Whereas the said company desires to construct its line of railroad upon such designated route and claims the right by virtue of said act so to do:

Now, therefore, in order to fulfill the obligations of the Government in the premises,

This agreement, made this 2nd day of September, in the year of our Lord eighteen hundred and eighty-two, between the confederated tribes of the Flathead, Kootenay, and Upper Pend d'Oreille Indians, resident on the Jocko (or Flathead) Reservation, in the Territory of Montana, represented by their chiefs, headmen, and heads of a majority of families, and being a majority of all the adult male Indians occupying or interested in the lands hereinafter described, the said Indians acting under the supervision and with the approval of the Secretary of the Interior of the United States, of the one part, and the United States of America, represented by Joseph Kay McCammon, Assistant Attorney General of the United States, duly appointed in this behalf by the Secretary of the Interior, of the other part, witnesseth:

That for the consideration hereinafter mentioned the said confederated tribes of Flathead, Kootenay, and Upper Pend d'Oreille Indians do hereby surrender and relinquish to the United States all the right, title, and interest which they now have under and by virtue of the aforesaid treaty of July sixteenth, eighteen hundred and fifty-five, in and to all that part of the Jocko (or Flathead) Reservation, situate in the Territory of Montana and described as follows, namely:

A strip of land not exceeding two hundred feet in width, that is to say, one hundred feet on each side of the line laid down on the map of definite location hereinbefore mentioned wherever said line runs through said reservation, entering the same at or near the summit of Coriagan Defile, passing by the valley

of Finlay Creek to the Jocko, along the Jocko to the Pend d'Oreille River, and down the valley of the Pend d'Oreille, passing out of the reservation at or near the mouth of the Missoula River, said strip of land being intended to be used by the said Northern Pacific Railroad Company, its successors or assigns, as a right of way and roadbed, and containing 2,300 acres. An official copy of said map of definite location was, on the day of the date hereof, produced and shown to said Indians in council assembled, was fully explained to them, and is herewith attached, marked with the letter A, and made a part of this agreement.

Also the several pieces or parcels of land situate along and adjoining the said strip of land hereinbefore described as the same are delineated on the five several plats or maps thereof also now produced and shown to said Indians and hereto attached and marked, respectively, with the letters B, C, D, E, F, and containing, respectively, the following areas, that is to say: Tract B, seventy acres; tract C, fifteen acres; tract D, fifteen acres; tract E, fifteen acres; tract F, fifteen acres; aggregating (exclusive of the strip of land hereinbefore mentioned) one hundred and thirty acres, the same being intended to be used by the said Northern Pacific Railroad Company for the purposes of station houses, depots, sidings, &c.

In consideration of such surrender and relinquishment of lands as aforesaid, amounting in the aggregate to fourteen hundred and thirty acres, the United States stipulates and agrees to pay to the said confederated tribes of Flathead, Kootenay, and Upper Pend d'Oreille Indians the sum of sixteen thousand ($16,000) dollars, being at the rate of eleven $\frac{18}{100}$ dollars per acre, to be deposited in the Treasury of the

United States to the credit of the said confederated tribes upon ratification of this agreement by Congress, and necessary appropriations made therefor, the sum aforesaid to be expended for the benefit of said Indians in such manner as the Secretary of the Interior may direct.

And for the considerations aforesaid, the United States further stipulates and agrees, upon ratification of this agreement by Congress and necessary appropriation therefor, to pay to the individual Indians, members of said confederated tribes, whose names appear on the schedule hereto annexed, marked with the letter K, the several sums set opposite their respective names and amounting in the aggregate to the sum of seven thousand six hundred and twenty-five dollars, as full compensation for any damages to improvements, or fenced or cultivated fields, which they may sustain by reason of the surrender and relinquishment of said lands or any part thereof as aforesaid, such compensation to be expended for the benefit of such individual Indians, or paid to them in cash, in the proportions to which they may be severally entitled thereto, appearing by said schedule, as the Secretary of the Interior may direct.

All provisions of existing treaties with the confederated tribes of Flathead, Kootenay, and Upper Pend d'Oreille Indians not affected by this agreement, to remain in full force and effect, and this agreement to be subject to ratification by Congress.

Executed at the Flathead Agency, in the Territory of Montana, this 2nd day of September, anno Domini eighteen hundred and eighty-two.

JOSEPH KAY MCCAMMON,
*Assistant Attorney General.*

The foregoing articles of agreement having been fully explained to us in open council, we, the undersigned chiefs and headmen, and heads of a majority of families, being a majority of all the adult male Indians of the confederated tribes of Flathead, Kootenay, and Upper Pend d'Oreille Indians, respectively, occupying or interested in the lands of the Jocko (or Flathead) Reservation, in the Territory of Montana, do hereby consent and agree to all the provisions and stipulations therein contained.

Witness our hands at the Flathead Agency, Mont., the day and year last aforesaid.

MICHELLE, his x mark.
ARLEE, his x mark.
ENEAS, his x mark.
PATTEE (SHTAS), his x mark.
BIG SAM, his x mark.
DANDY JIM, his x mark.
RED MOUNTAIN STCHAW, his x mark.
JIM FINLAY, his x mark.
ALEXANDER MATTE, his x mark.
MICHELLE RIVAIS, his x mark.
(And 209 other signatures.)

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